either or both amendments violated, defendants' motions must be denied.

"An unlawful arrest of an offender does not work a pardon in his behalf, and seizure without process and by force of government property, of which it is entitled to immediate possession, does not entitle the offender to a return of the property, nor to exclusion of its use in evidence against him. The auto and whisky, by virtue of the National Prohibition Act (41 Stat. 305), were forfeited, and thereby transferred to the United States, the moment defendants embarked upon the unlawful transportation. The United States was then vested with the right of property and possession. Even as any other owner of property in like circumstances at common law, the United States without process could recover possession by force. And however, if at all, irregularly the officers proceeded, the defendants have no right to return of the property, nor to object to its use in evidence, whatever other, if any, right or remedy they may have. See U. S. *v.* Stowell, 133 U. S. 16, 10 Sup. Ct. 244, 33 L. Ed. 555, and cases; Taylor *v.* U. S., 3 How. 205, 11 L. Ed. 559; Boyd *v.* U. S., 116 U. S. 623, 6 Sup. Ct. 524, 29 L. Ed. 746.

"Silverthornes Case, 251 U. S. 385, 40 Sup. Ct. 182, 64 L. Ed. ——, and cases therein cited, apply to search and seizure of the offender's papers and property and use thereof in evidence, and not to those of others, of which the offender has unlawful possession. The first violates both amendments; the second, neither, so far as return of the seized articles and their exclusion as evdence are concerned."

Bills and Notes—Note for Gambling Debt Void in Hands of Bona Fide Holder.—In Levy *v.* Doerhoefer's Ex'r, 222 S. W. 515, the Court of Appeals of Kentucky held that a promissory note given for a gambling debt is void in the hands of a bona fide purchaser for value and without notice as the Kentucky statute adopting the Negotiable Instruments Act did not modify the gaming statutes which make void a note based upon a gambling consideration.

The court said in part: "In Bohon's Assignees *v.* Brown (101 Ky., 354, 41 S. W., 275, 38 L. R. A., 503, 72 Am. St. Rep., 420), quoting from Cochran *v.* German Ins. Bank (9 Ky. Law Rep., 196), decided by the Superior Court, we said:

"'A bill or note based upon a gambling consideration is absolutely void, and the drawer or maker is not bound to even an innocent holder.'

"And in the case of Farmers' & Drovers' Bank *v.* Unser (13 Ky. Law Rep., 966) the court said:

"'The whole current of authority is that the obligor may insist upon the illegality of the contract or consideration, notwithstanding the hands of an innocent holder for value, in all those cases in which

he can point to an express declaration of the Legislature that such illegality makes the contract void.'

"In Alexander & Co. *v.* Hazelrigg (123 Ky., 688, 97 S. W., 353, 29 Ky. Law Rep., 1212) the opinion discusses at length the question under consideration and reviews numerous authorities bearing on it; and we therein held that when a statute in express terms declared contracts growing out of wagering or gambling transactions which are prohibited by statute absolutely void, no recovery can be had upon a note evidencing such a contract, even where the action is brought by an innocent holder of the note. The contention was made in the case supra that Kentucky Statutes, section 1955, in so far as it declares contracts growing out of wagering or gambling transactions void, has been repealed by the Negotiable Instruments Act of 1904 (Laws 1904, chap. 102), providing for the protection of innocent holders of negotiable instruments. In rejecting that contention we said:

"'It has been the policy of this State to suppress gaming, and the statutes making gaming contracts void are founded upon what the Legislature has for many years deemed to be sound public policy. It is inconceivable that the General Assembly, in the passage of the Act of 1904, for the protection of innocent holders of negotiable instruments, intended to or did repeal section 1955, Ky. St., 1903, which declares all gaming contracts void. In our opinion the disappointment now and then of an innocent holder of a negotiable instrument would not be hurtful and injurious to the best interests of the State as the removal of the ban from gaming contracts.' (See Daniel on Negotiable Instruments, sec. 197; Sondheim *v.* Gilbert, 117 Ind., 71, 18 N. E., 687, 5 L. R. A., 432, 10 Am. St. Rep., 23.)

"In the later case of Holzbog *v.* Bakrow (156 Ky., 161, 160 S. W., 792, 50 L. R. A., N. S., 1023) the doctrine that, where a note is given for a gambling consideration its infirmity may be shown against a *bona fide* holder, was again approved, but with this qualification authorized by the facts of that case, viz: That the maker of such a note who induces another to purchase it of the payee, assuring him that it is valid and will be paid, cannot set up the illegality of the consideration against the assignee, who had no notice thereof, as in that case the doctrine of estoppel will be applied to prevent such defense (Woolridge *v.* Cates, 2 J. J. Marsh., 22, 16 Cyc., 783).

"But, however great his ignorance of the illegality of the consideration for which the note here sued on was given, the appellant, as assignee thereof, cannot rely on such estoppel, as he has neither alleged nor attempted to prove that he was induced to purchase the note or accept an assignment of it by anything said or done by the maker. So, if the finding of the commissioner that the consideration for the note was a gambling debt or debts owing by the maker to the payee is supported by the evidence as set forth in his report, the action of the chancellor in overruling appellant's exception to

such finding was amply authorized. And looking to the evidence we find it all to the effect that the note was given in settlement of an indebtedness of Louis P. Doerhoefer to Samuel Dinkelspiel growing out of gambling transactions between them."

The question presented for decision in the above case is a very interesting one upon which the authorities are conflicting. In Raleigh County *v.* Poteet, 74 W. Va. 511, it was held that a bona fide holder could not recover upon a note originally given for a gambling debt. The Court of Appeals of the District of Columbia, has taken a different view of the question and in Wirt *v.* Stubblefield, 17 App. Cas. 283, held that, a holder in due course can recover upon such a note. The New York Law Journal in referring to this question says of the New York decisions:

"In New York there has been no decision by the Court of Appeals on the precise point involved. The decisions of the lower courts are in conflict. The Appellate Division for the Second Department takes the view adopted in West Virginia and holds the note invalid as against the maker, even in the hands of a holder in due course (Sabine *v.* Paine, 166 App. Div. 9). The Appellate Term in the First Department has held the opposite (Oeser *v.* Behrend, 89 Misc., 391)."

Keeping in mind that the Negotiable Instruments Act has for its purpose the free and unhampered circulation of negotiable paper and to that end protects bona fide purchasers for value and without notice it would seem that the District of Columbia court takes the preferable view of the question.

Husband and Wife—Right of Husband to Enjoin "Nagging" by Wife.—In Drake *v.* Drake, 177 N. W. 624, the Supreme Court of Minnesota, held, that the rule that a husband cannot maintain against his wife an action in equity to restrain and enjoin the commission of acts towards him which amount to nothing more than a tort or series of torts, applies to acts and conduct on the part of the wife commonly known as nagging.

The court said in part: "The allegations of the complaint, somewhat indefinite in several respects, taken as a whole, charge acts of misconduct on the part of defendant amounting to what is commonly known and understood as nagging, constituting in law nothing more than a series of personal torts, involving neither a breach of contract nor specific property right. The action then sounds in tort, and that it cannot be maintained seems settled by the decision in Strom *v.* Strom, 98 Minn. 427, 107 N. W. 1047, 6 L. R. A. (N. S.) 191, 116 Am. St. Rep. 387. That was a similar action, one for an alleged assault and battery committed by the husband on the wife, and was brought by the wife, and not by the husband, as in the case at bar. The court in disposing of the case recognized and